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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,208	12/19/2000	David P. Henzerling	42390P10397	7691

8791 7590 11/10/2003

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EXAMINER

HESS, DANIEL A

ART UNIT PAPER NUMBER

2876

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/741,208

Applicant(s)

HENZERLING, DAVID P.7

Examiner

Daniel A Hess

Art Unit

2876

--The MAILING DATE of this communication appears on the cover sheet with the corresponding address--

THE REPLY FILED 22 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b))

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____.
3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____

KARL D. FRECH
PRIMARY EXAMINER

Continuation of 5, does NOT place the application in condition for allowance because:

On page 10 of the applicant's response, two arguments are made as to why the rejection should be withdrawn.

Firstly, the applicant notes the examiner's admission in the earlier action that "... no single reference teaches peer-to-peer exchange of music files between automobiles ...". But the examiner notes that it is not necessary for every feature to be taught by a single reference. That is only the requirement for 102b rejections; in this case a 103 reference has been made where music files in autos is taught in Razavi and peer-to-peer exchange of files (including music files) is taught by Fanning. Fanning is then incorporated into Razavi.

Secondly, the applicant states, "the only place ... teaching ... a peer-to-peer exchange of music files ... is in the applicant's specification." This is untrue. Fanning teaches (column 4, lines 20-25) peer-to-peer action; the files in question may be music files (column 9, lines 20-25), i.e. MP3 audio. As a side-note, Shawn Fanning's NAPSTER software (which is the technology literally protected by the patent) became synonymous with peer-to-peer exchange of music files and attracted national attention as well as millions of users and was a center of the controversy over digital music piracy.

A handwritten signature in black ink, appearing to be 'DGH' or similar, written in a cursive style.